

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

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2009 JUN 29 AM 9:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

RULE TYPE: Legislative CITE AUTHORITY: WV Code §§ 16-1-4(k)(2) and 16-2-1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 67

TITLE OF RULE BEING AMENDED: DISTRIBUTION OF STATE AID FUNDS TO LOCAL BOARDS OF HEALTH

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 6/30/09 AT noon 12:00 ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Kay Shamblin or Ann Spaner
WV Bureau for Public Health
350 Capitol Street, Room 515 Or 702
Charleston, WV 25301

(304) 558-8870 or (304) 558-2971
Fax (304) 558-1437 or (304) 558-1035
Kay.C.Shamblin@wv.gov or Ann.A.Spaner@wv.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Department of Health and Human Resources
Bureau for Public Health
Legislative Rule
Title 64, Series 67**

DISTRIBUTION OF STATE AID FUNDS TO LOCAL BOARDS OF HEALTH

BRIEF SUMMARY

This rule has been the subject of a major study to determine a fair and equitable method for distribution of state aid funds to local boards of health. In 2005, the Center for business and Economic Research at Marshall University (CBER) was contracted to perform an independent analysis of funding and funding distribution for local health departments.

This study identified and documented a financial crisis in West Virginia Public Health. The study found that West Virginia ranks dead last in per capita spending on local health. Among the most important recommendations, the study concluded that significantly more state funding should be appropriated to support state mandated local public health services and a more equitable funding formula should be implemented. The formula recommended by the CBER Report is contained in this proposed rule.

**Department of Health and Human Resources
Bureau for Public Health
Legislative Rule
Title 64, Series 67**

DISTRIBUTION OF STATE AID FUNDS TO LOCAL BOARDS OF HEALTH

STATEMENT OF CIRCUMSTANCES

In the Regular Legislative session of 2009, House Bill 3195 passed on April 11, 2009, and was effective from passage. The change made by that bill to the state public health rulemaking statute states explicitly that the Legislature finds that an emergency exists and that the Secretary must file an emergency rule to address the distribution of state aid funds to local boards of health, in WV Code §16-1-4(k)(2). At the same time that the Bureau for Public Health is filing this rule as an Emergency Rule, it is also being filed as a Legislative rule so that it may remain in effect once the Emergency rule expires.

The background which necessitates this filing is as follows.

In 2005, the Center for business and Economic Research at Marshall University (CBER) was contracted to perform an independent analysis of funding and funding distribution for local health departments.

This study identified and documented a financial crisis in West Virginia Public Health and recommended that a more equitable funding formula should be implemented.

The 2009 Legislative session passed HB 3195 on April 11, 2009 which allows for the Secretary of DHHR to propose a rule for legislative approval for the distribution of state funds to local health departments. It also recommends components for a more equitable distribution formula. These components are included in the legislative rule that is submitted hereunder. This rule will be filed for public comments and undergo any necessary revisions and refinements between now and the 2010 Legislative session to improve the rule to comply with the legislative intent and to implement the recommendation of the CBER Funding Study Report.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Distribution of State Funds to Local Boards of Health, 64CSR67

Type of Rule: x Legislative Interpretive Procedural

Agency: Health and Human Resources

Address: 1900 Kanawha Blvd. East
Bldg. 3, Room 206
Charleston, WV 25305

Phone Number: (304)-558-2971 Email: Ann.A.Spaner@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The purpose of the this rule is to establish a funding mechanism for state aid for local health departments and to establish that no public health department will experience decreases based on the new funding formula for the next three years. The recommended formula is based on prevalence of poverty, health status, population density, interventions/permits and consolidations. The rule allows for a percentage of funds to be withheld and available for emergency funding for local health departmnet. The rule allows for a percentage of funds to be available for state support of local health departments.

The amount of state funds available for distribution to local health departments by the formula established is the amount of funds appropriated by the Legislature for this purpose. Approval of this rule will create no additional costs to the state.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| Effect of Proposal | Fiscal Year | | |
|------------------------------------|--|--|--|
| | 2009 Increase/Decrease (use "-") | 2010 Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost | 0 | 0 | 0 |
| Personal Services | | | |
| Current Expenses | | | |
| Repairs and Alterations | | | |
| Equipment | | | |
| Other | | | |
| 2. Estimated Total Revenues | | | |

3. Explanation of above estimates (Including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The West Virginia Public Health Partnership, which is comprised of representatives of both the Bureau for Public Health and local health departments, contracted with the Center for Business and Economics Research at Marshall University (CBER) to perform an independent analysis of service levels, funding and fund distribution. One of the key findings of this study was that adopting a new formula that better represents the needs and fiscal capacities fo the local bodies would better distribute State funding. Full implemetation of this formula would require significantly greater appropriations of state funds for local health departments in the future.

Date

Agency

Authorized Representative

6-26-09

Department of Health and Human Resources

Martha Yeager Walker

Martha Yeager Walker
Secretary

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June , 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Ann Spaner, Director
Public Health Regulations
Bureau for Public Health
350 Capitol Street, Room 702
Charleston, WV 25301
(304) 558- 2971

LEGISLATIVE RULE TITLE: DISTRIBUTION OF STATE FUNDS
TO LOCAL BOARDS OF HEALTH

1. Authorizing statute(s) citation WV Code §§16-1-4 and 16-2-11

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kay Shamblin, Director
Division of Local Health
Bureau for Public Health
350 Capitol Street, Room 515
Charleston, WV 25301
Kay.C.Shamblin@wv.gov

g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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SECRETARY OF STATE

TITLE 64
LEGISLATIVE RULE
DIVISION OF HEALTH
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 67
DISTRIBUTION OF STATE AID FUNDS TO
LOCAL BOARDS OF HEALTH

§64-67-1. General.

1.1. Scope. -- This legislative rule establishes a formula for the ~~director of the division of health~~ Commissioner of the Bureau for Public Health to use in distributing State aid funds to local boards of health.

1.2. Authority. -- ~~W. Va. Code~~ WV Code §§16-1-4, 16-2-3 and 16-2A-6 16-2-11.

1.3. Filing Date. -- ~~April 8, 1994.~~

1.4. Effective Date. -- ~~April 8, 1994.~~

§64-67-2. Application and Enforcement.

2.1. Application -- This rule applies to the distribution of State aid funds to local boards of health by the ~~director of the division of health~~ Commissioner.

2.2. Enforcement -- This rule is enforced by the ~~director of the division of health~~ Commissioner.

§64-67-3. Definitions.

3.1. ~~The director of the division of health or his or her designee.~~ Base amount – the minimum amount of funding necessary to pay the costs of four full time staff persons, including a nurse, a sanitarian, an administrator and a clerical worker using statewide average salaries for each position plus 30% for benefits and 20% for overhead for each local health department.

3.2. ~~Division of Health (Division) — The division of health of the department of health and human resources.~~ Bureau – The Bureau for Public Health in the Department of Health and Human Resources.

3.3. Commissioner – The Commissioner of the Bureau for Public Health or her or his designee.

3.4. Consolidation – A formal combining of two or more health departments and the combining of their health department boards.

~~3.3.~~ 3.5. Fiscal Year -- Twelve (12) month period beginning the first day of July and ending the thirtieth day of June.

3.6. Interventions – The number of interventions per thousand population above the state average in the local health department service area, which may include, but shall not be limited to, total patient encounters, environmental inspections, permits issued and other appropriate quantifiable public health services performed

by local health departments.

~~3.4. 3.7. Local Board of Health -- A board of health created under the provisions of W. Va. Code §§16-2-1 to 16-2-15 16-2-7 or 16-2A-1 to 16-2A-10. A local board of health may be organized to encompass one (single county board of health) or more counties (multi-county board of health).~~

3.8. Population - The population of a county as determined by the Population Estimates Program of the United States Census Bureau data (www.census.gov).

3.9. Population density – A calculation derived from the population data and the Land Area retrieved from the United States Census Bureau.

3.10. Poverty level – The last full year of data per county as reported in the Small Area Income and Poverty Estimates for West Virginia counties.

~~3.5. 3.11. State Aid Funds for basic public health services – All Funds funds appropriated by the Legislature to provide aid to local boards of health.~~

3.12. Years of life lost – The last full year of data as reported by the West Virginia Office of Vital Statistics by county for resident deaths and potential years of life lost before age 75.

§64-67-4. Formula; Allocation of Funds.

4.1. The ~~director~~ Commissioner shall distribute State aid funds for basic public health services funds to local boards of health as directed by the State Legislature, this rule and State law.

4.2. The amount of State aid funds for basic public health services funds available for distribution to local boards of health by the formula established by Section 4.3 of this rule is the amount of funds appropriated by the Legislature for this purpose: Provided, That prior to applying the formula, the ~~director~~ Commissioner may withhold no more than two percent (2%) of the funds, as shown in the appropriate line item in the State budget, for use in emergencies according to the provisions of Section 5 of this rule: and, Provided, further, That prior to applying the formula, the ~~director~~ Commissioner shall subtract and distribute no more than 4.7% of the total funds necessary to implement any special instructions of the Legislature appropriated by the legislature to be retained by the bureau for state support of local health departments.

4.3. The ~~director~~ Commissioner shall calculate the amount of State aid funds for basic public health services funds to be distributed to each local board of health according to the following nine step formula:

~~4.3.1. The director shall first determine a per capita dollar figure by dividing the amount of State funds available for distribution by the total State population;~~ Step 1 Poverty: The “need factor” is the percentage of individuals in the county living below the level of income established by the federal government as being in poverty. Poverty shall be assigned a weight of forty percent.

4.3.1.a. Coefficients are percent living below the poverty line:

4.3.1.a.1. Less than 100-110% = 0.00;

4.3.1.a.2. 111 – 120% = 0.05;

4.3.1.a.3. 121 – 130% = 0.10;

4.3.1.a.4. Above 130% = 0.15.

4.3.2. The director shall multiply the population of each county by the per capita dollar figure to determine each county's share of the funds; and Step 2 Health Status: The “need factor” is years of potential life lost in the county. Health status is assigned a weight of 20 percent.

4.3.2.a. Coefficients are the percent above the state average:

4.3.2.a.1. Less than 100 – 110% = 0.00;

4.3.2.a.2. 111-120% = 0.05;

4.3.2.a.3. 121- 130% = 0.10;

4.3.2.a.4. Above 130% = 0.15.

4.3.3. In the instance of a single county local board of health, the director shall distribute to the board the county's share of funds as calculated according to Section 4.3.2 of this rule; in the instance of a multi-county board of health, the director shall distribute to the board the sum of the funds calculated for the individual counties under the jurisdiction of the board. Step 3 Population Density: The “need factor” is density of individuals living in the county less than the state average. Population density is assigned a weight of 15 percent.

4.3.3.a. Coefficients are the percent below the state average:

4.3.3.a.1. Less than 77.0% = 0.15;

4.3.3.a.2. 77.1 – 82.4% = 0.10;

4.3.3.a.3. 82.5 – 90.0% = 0.05;

4.3.3.a.4. Above 90.0% = 0.00.

4.3.4. Step 4 Interventions: The “need factor” is the number of interventions per thousand population above the state average in the county total. Interventions are assigned a weight of 10 percent.

4.3.4.a. Coefficients are the percent above the state average:

4.3.4.a.1. Less than 100 -110% = 0.00;

4.3.4.a.2. 111- 120% = 0.05;

4.3.4.a.3. 121 – 130% = 0.10;

4.3.4.a.4. Above 130% = 0.15.

4.3.5. Step 5 Consolidation: While not a “need factor” this coefficient is included to encourage

counties to merge in the provision of public health services. The indicator is the number of counties served by the Local Board of Health. Consolidation is assigned a weight of 15 percent;

4.3.5.a. Coefficient is the number of counties in the district served by the local board of health:

4.3.5.a.1. One County = 0.00;

4.3.5.a.2. Two to four counties = 0.10;

4.3.5.a.3. Five or more counties = 0.15.

4.3.6. Step 6: Determine the weighted population for each local board of health by:

4.3.6.a. Multiplying each coefficient from steps 1 through 5 by the factor weight for that coefficient,

4.3.6.b. Adding the results for each calculation in subdivision 4.3.6.a. to the number one;

4.3.6.c. Multiply the number of people in the county by the result of subdivision 4.3.6.b. to obtain the weighted population of the county.

4.3.7. Step 7: Base Amount: The determination of the base amount of money per county shall be calculated as follows:

4.3.7.a. Determine the amount of money needed to pay for four full time staff; a nurse, a sanitarian, an administrator and a clerical worker, using statewide average salaries for each position, plus 30% for benefits and 20% for overhead;;

4.3.7.b. Multiply the base amount calculation times fifty-five counties.

4.3.8 Step 8: Per Capita Distribution: Determine the per capita distribution by;

4.3.8.a. Subtracting the total base amount allocation from the funds available for distribution;

4.3.8.b. Then divide the weighted population of each county into the amount remaining to determine the per capita distribution for each local board of health.

4.3.9. Step 9: Hold Harmless: This step is included to provide that each local health department receives no less in state funds than they received in the 2009 budget year for a minimum of three years from the effective date of this rule. To implement the hold harmless provision, make the following calculations:

4.3.9.a. Add all amounts less than those received in fiscal year 2009 by each local health department;

4.3.9.b. Determine the percent this amount is of the total amount of state funds available for distribution;

4.3.9.c. Subtract this percentage from each local health department with increases;

4.3.9.d. Redistribute this amount to bring each local health department and the bureau back to its 2009 distribution;

4.3.9.e. If state funds are less than the total 2009 amount, the loss will be a percentage loss to all local health departments who have gained and to the bureau.

4.4. In performing the calculations described in Section 4.3 of this rule, the ~~director~~ Commissioner shall use the most recent ~~United States Bureau of the Census~~ federal, state and county population figures available.

4.5. The ~~director~~ Commissioner shall complete the calculations as soon as possible, but not more than two (2) weeks after the budget is passed and the legislative budget instructions, commonly referred to as the budget digest, are approved.

4.6. After completing the calculations described in Section 4.3 of this rule, the ~~director~~ Commissioner shall inform local boards of health in writing of their allocation as quickly as possible, but in any case not more than four (4) weeks after the Legislature has passed the budget and approved the legislative budget instructions.

4.7. The ~~director~~ Commissioner shall cause State aid funds for basic public health services funds to be distributed to eligible local boards of health according to standard State procedures beginning the first day of July of the fiscal year for which the funds have been appropriated or as soon as possible after the Legislature has passed the budget and approved the legislative budget instructions.

~~4.8. To minimize the impact of potential losses for some counties, the director shall phase in the use of the per capita formula.~~

~~4.9. Beginning with fiscal year 1997, the director shall distribute State aid funds to local boards of health on a per capita basis as provided by this rule and as otherwise required by State law.~~

§64-67-5. Emergency Fund; Establishment; Administration.

5.1. The ~~director~~ Commissioner shall use the emergency fund established under the provisions of Section 4.2 of this rule to assist local boards of health in need of funds to meet unanticipated financial emergencies. The Commissioner or his or her designee may develop a form application for one or more local health departments to use to apply for emergency funds.

5.2. Funds not obligated for emergency use by the fifteenth day of May shall be distributed by the ~~director~~ Commissioner to local boards of health according to the provisions of Section 4.3 of this rule.

§64-67-6. Administrative Due Process.

~~Those persons~~ Any person adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Bureau for Public Health rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-67-7. Severability.

~~The provisions of this rule are severable. If any provision of this rule is invalid, the remaining provisions remain in effect.~~